IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

SUO MOTU CONTEMPT PETITION NO.1 OF 2006
IN
CIVIL APPLICATION NO.2075 OF 2005
IN
FIRST APPEAL NO.2031 OF 2005

High Court on its Motion

V/s.

Bandra-Olar Co-op.Hsg.Society. ..Respondent.

ALONGWITH

CIVIL APPLICATIN NO.7 OF 2006
IN
SUO MOTU CONTEMPT PETITION NO.1 OF 2006
IN
CIRST APPEAL NO.2031 OF 2005

Sebian Cooperative Housing Society Ltd. ..Applicant.

V/s.

Bandra-Olar Co-op.Hsg.Society & Ors. ..Respondents.

Mr.L.M.Acharya for applicant in C.A.No.7 of 2006.

Mr.Rego with Mr.S.P.Ghaste for respondent No.1.

CORAM: A.M.KHANWILKAR,J

DATE : MARCH 22, 2006.

P.C. :

1. Heard counsel for the parties.

2. Perused the pleadings as well as the report of the Court Commissioner. After hearing the

counsels for some time, as I indicated my mind, on the instructions of the contemnors who are personally present in the court, their counsel states that the court may not dwell upon any of the issues as the contemnors are willing to provide access by placing ramp near the opening provided through the Society of the Contemnors so as to bridge the gap between the two plots, which will facilitate the Appellant Society to operate the emergency vehicles such as water tankers, Ambulances, Fire Brigade etc. The contemnors assure to provide metal ramp within two weeks. Assurance is also given on behalf of the respondent society by the contemnors, who are the office bearers of the society, that no obstruction of any kind, whatsoever, will be created for plying such emergency vehicles on any ground, including that it is during the night time.

3. To observe the conduct of the contemnors, instead of finally disposing of the Suo Motu Contempt Petition and Civil Application No.7 of 2006, hearing is deferred, to be considered alongwith First Appeal at the time of final hearing of the First Appeal. It will be open to the parties to approach this court, if any logistical problem is encountered either for erection of the metal ramp or during the plying of

emergency vehicles by the appellants/defendants.

4. Grievance is made before this court that after order was passed on 20th February, 2006 by this court appointing court commissioner, the earlier access of footway, which was provided to the members of the appellant society has been obstructed by the contemnor society. This has been done by closing the main gate. Indeed, it is open to the contemnors to close the main gate to secure the safety of its resident members but that does not mean that right, which was enjoyed by the parties during the pendency of the proceedings should be affected in any manner. In other words, whenever, the resident members of the appellant society have to use the access as footway, no obstruction of any manner shall be created by the contemnor society. The office bearers of the contemnors society, who are present in the court, undertake not to cause obstruction either themselves or through their agent or security agency appointed by them to the right of using the opening as foot way, which was enjoyed by the appellant society. The contemnors assure that care will be taken that the security agency employed by their Society shall not create any untoward situation even if the members of the appellant society are required to pass through

the access to use it as footway during the night time. It is made clear that this privilege is granted only to the resident members and their family(of the Appellant Society only). It is made clear that the footway access will be available to the resident members of the appellant society, from the compound of the contemnor society, but not as of right between 11 p.m. till 5.30 a.m. during the night time. However, that arrangement will not preclude operating of emergency vehicles even during said period.

5. Having regard to the nature of controversy involved, hearing of the main appeal is expedited. Liberty to apply.

6. Mr.Gorwadkar was appointed as Court Commissioner. Office is directed to make payment to the Court Commissioner from the amount already deposited towards his fees by the parties to the proceedings.